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Governor Baker Submits List of 138 Opportunity Zones to U.S. Treasury

BY MATTHEW A. MORRIS • MAY 17, 2018

On April 19, 2018, the Commonwealth's Executive Office of Housing and Economic Development announced that Governor Baker submitted a list of Opportunity Zone designations to the U.S. Treasury. The full list of Massachusetts cities and towns with designated Opportunity Zone tracts can be found in a recent [press release](#) by the Baker Administration.

The Opportunity Zone program, which was created by the Tax Cuts and Jobs Act of 2017, provides all taxpayers—including but not limited to entrepreneurs, real estate developers, investors, and business owners—with the opportunity to defer gains from sales or exchanges of property to unrelated parties by investing those gains in a “qualified opportunity fund.” Section 1400Z-2(d)(1) of the Code defines a qualified opportunity fund as an “investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property.” Qualified Opportunity Zone property includes three categories of “low-income communities” under Code section 45D(e): (1) any community in which the poverty rate is at least 20 percent, (2) non-metropolitan communities in which the median family income does not exceed 80 percent of the statewide median family income, and (3) metropolitan communities in which the median family income does not exceed the greater of statewide median family income or the median family income of that metropolitan area.

Section 1400Z-2(a)(1) provides that “[i]n the case of gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer,” the taxpayer will not have to recognize gain if he invests an amount at least equal to that gain in a qualified opportunity fund within 180 days of the sale or exchange. Gain on the amount that the taxpayer invests in the qualified opportunity fund will be deferred until the earlier of the date on which the investment in Qualified Opportunity Zone Property is sold or December 31, 2026. The opportunity to defer gain on otherwise taxable property sales by investing in Qualified Opportunity Zones should be particularly appealing to Massachusetts taxpayers who are unable to defer gains under the new rules for like-kind exchanges under Code section 1031—under these new rules (effective January 1, 2018), only “real property held for productive use in a trade or business or for investment” is considered to be “of like kind” for purposes of a tax-deferred exchange.

On or before March 21, 2018, Governor Baker had to nominate up to 25 percent of the 581 eligible low-income census tracts in Massachusetts as Opportunity Zones. Governor Baker recommended to the U.S. Treasury that 138 of these low-income census tracts be designated as Opportunity Zones. The Internal Revenue Service website holds a detailed record of the [Qualified Opportunity Zone](#) program on their website.

The U.S. Treasury is required to respond to Governor Baker's submission of designated Opportunity Zone tracts on or before May 18, 2018, which is exactly 30 days from the date of the submission. Under section 1400Z-1(b)(2) of the Code, however, the U.S. Treasury can extend this 30-day consideration period for an additional 30 days. A map of [eligible low-income tracts](#) will be updated with the designated Opportunity Zone tracts as soon as the U.S. Treasury approves Governor Baker's submission.